

REMARKS/ARGUMENTS

Favorable reconsideration and allowance of the present application is respectfully requested. Claims 1-32 are pending in the above application, of which claims 1, 14 and 29 are independent.

The Office Action dated March 11, 2010, has been received and carefully reviewed. In that Office Action, claims 1-7, 10, 12-17, 24-26 and 29-32 were rejected under 35 U.S.C. 103(a) as being unpatentable over DE 10260030 (hereinafter, "Demuth") in view of Carpentier, claims 8 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Demuth in view of Carpentier and further in view of Hayashi, and claims 27 and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Demuth in view of Carpentier and further in view of Hirao. It is believed that all claims are allowable over the art of record, and reconsideration and allowance of claims 1-32 is respectfully requested in view of the following remarks.

REJECTIONS UNDER 35 U.S.C. 103(a)

It is respectfully submitted that at least claims 14, 30 and 32 patentably distinguish over the art of record and that the Office Action has not presented a prima facie case of obviousness in connection with these claims. Applicant may consider rewriting claims 30 and 32 in independent form they are indicated to be allowable or filing a Notice of Appeal if claims 14, 30 and 32 remain rejected. It is respectfully requested that the examiner answer the following arguments regarding claims 14, 30 and 32 as required by MPEP 707.07(f) so that Applicant may determine whether the present application is in condition for appeal.

Claim 14 was rejected under 35 U.S.C. 103(a) as being unpatentable over Demuth in view of Carpentier. Claim 14 recites a heat exchanger for a motor vehicle having a heat exchanger block which has pipes through which a first medium can flow on the primary side, and pipes around which a second medium can flow on the secondary side the pipes having flow ducts and pipe ends. The heat exchanger block also includes at least one end piece which holds the pipe ends and which end piece has at least one base plate, diverter plate and cover plate. The block also includes at least one inlet chamber and/or outlet chamber which is connected to one, or in each case to one, end piece so that the first medium is conductable from the inlet chamber to the outlet chamber through the flow ducts. A housing casing surrounds the pipes and has an inlet and an outlet for the second medium. Claim 14 further recites that corrugated pieces of sheet metal with longitudinal ducts are arranged between the pipes.

Claim 14, which originally depended from claim 1, was rejected in the first Office Action on the ground that Demuth showed longitudinal ducts 7. Claim 14 was thereafter rewritten in independent form, but the scope of the claim was not changed. Claim 14 is now rejected because the examiner indicated that he meant to refer to channels 17 in Carpentier instead of channels 7 in Demuth¹. If this is the case, the Office Action is now requiring that Demuth be modified to have longitudinal ducts rather than the transverse ducts that are shown. However, no reason has been provided for making this modification to Demuth, and a *prima facie* case of obviousness has

¹ The present Office Action indicates that Demuth includes "corrugated pieces of sheet metal (i.e. fins)(17)." However, elements 17 in Demuth are circular openings and element 17 in Carpentier is part of a corrugated structure. It therefore appears that the examiner is referring to structure 17 of Carpentier and not to element 17 of Demuth.

therefore not been presented. *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007). Claim 14 is submitted to be allowable over the art of record at least because a *prima facie* case of obviousness has not been presented in connection with this claim.

Claim 30 also includes a limitation regarding "longitudinal" ducts and is submitted to be allowable for at least the same reasons as claim 14.

A *prima facie* case of obviousness has also not been presented in connection with claim 32. Claim 32 recites, *inter alia*, a heat exchanger for a motor vehicle that includes a heat exchanger block and a housing casing. The heat exchanger block includes a plurality of pipes, each of which has a plurality of flow ducts and first and second ends. The flow ducts extend in a longitudinal direction from the first pipe ends to the second pipe ends, and a first end plate is connected to the first pipe ends and a second end plate is connected to the second pipe ends. The housing casing surrounds the pipes and extends between the first end piece and the second end piece. Demuth shows a heat exchanger and Carpentier shows a heat exchanger inside a housing. Carpentier does not show a housing extending between first and second end plates. Therefore, at most, the combination of Demuth and Carpentier might suggest placing Demuth's heat exchanger inside a housing. However, nothing about Carpentier suggests that a housing should be provided between first and second end plates of a heat exchanger block as recited in claim 32. Demuth and Carpentier do not show or suggest the limitations of claim 32, and claim 32 is submitted to be allowable for at least this reason.

The Office Action indicates that "the shape of the housing is an obvious mechanical expedient to one of ordinary skill in the art" and "one of ordinary skill would

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design a housing which would minimize material and cost as well as maintain a suitable profile for the desired needs of the device.” First, it is respectfully requested that the examiner provide the legal authority for finding that a modification is obvious because it is “an obvious mechanical expedient.” Similar language is used to support rejections based on legal precedent, MPEP 2144.04, to show that a change is merely an aesthetic change, for example, but no such legal precedent is cited in the Office Action. Applicant is not proposing to change the appearance of a housing for aesthetic reasons or to change the size of a housing, but rather to make a housing extend between first and second end plates of a heat exchanger block, and no such structural arrangement is shown in the prior art. Unless the examiner is relying on legal precedent, it is respectfully submitted that calling a proposed modification a “mechanical expedient” does not constitute a *prima facie* case of obviousness.

Next, the Office Action indicates that one would modify Demuth in order to “minimize material.” While minimizing material might be desirable, nothing in the record suggests minimizing material in the way suggested by the Office Action. The Office Action also indicates that modifying Demuth would “minimize cost.” It is respectfully requested that the examiner explain how modifying Demuth as stated in the Office Action is believed to “minimize cost.” The Office Action also indicates that one of ordinary skill in the art would modify Demuth to “maintain a suitable profile for the desired needs of the device.” Applicant is claiming a structure that is not shown or suggested by Demuth and/or Carpentier. It is therefore respectfully requested that the examiner explain what “suitable profile” or “desired needs of the device” would lead one of ordinary skill in the art to make a housing extend between end plates of a heat

exchanger block as claimed. It is respectfully submitted that a proper reason for modifying Demuth and Carpentier to include a housing provided between first and second end plates of a heat exchanger block has not been provided, and that claim 32 is allowable over Demuth and Carpentier for at least this reason.

CONCLUSION

It is believed that at least claims 14-17, 30 and 32 are in condition for allowance. Wherefore, reconsideration and allowance of at least these claims is earnestly solicited. If the examiner believes that any additional changes would place the application in better condition for allowance, the examiner is invited to contact the undersigned attorney at the telephone number listed below.

Deposit Account Authorization

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-3828 and please credit any excess fees to such deposit account.

Respectfully submitted,



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